

Pennsylvania Association of Nonprofit Organizations

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To: Lobbying Disclosure Regulations Committee
From: David A. Ross, J.D. Public Policy Officer
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Date: August 2, 2007
Subject: The Impact on Charities of the Lobbying Disclosure Regulations Under
Pennsylvania Act 134 of 2006.

Good morning Mr. Chairman, Committee members and representatives of the Committee, Thank you for providing this public forum. I would like to acknowledge this Committee for the fair and open manner in which this hearing is being conducted. This process has taken many months and a great deal of effort. The Committee deserves credit, but more work remains.

My name is David Ross. I am the Public Policy Officer for PANO, Pennsylvania Association of Nonprofit Organizations. PANO is the statewide membership organization serving and advancing the charitable nonprofit sector through leadership, advocacy, education and services in order to improve the quality of life in Pennsylvania. PANO is the 501(c)(3) charitable nonprofit organization representing over 700 member charities and the broader charitable community, helping Pennsylvania's charities become more effective. PANO was instrumental in facilitating the coalition that led to the enactment of Act 55, "the Institutions of Purely public charities Act" in 1997. Since 1984, PANO has advocated and lobbied in the public interest on behalf of charities. Lobbying Disclosure is of great concern to PANO, to our member organizations, and to the entire charitable community.

Pennsylvania is home to approximately 61,000 501(c)(3) public charities. Of these, nearly 90% have budgets of under \$500,000 (PANO and the majority of our member organizations among them). The 10% with budgets over \$500,000 (not even 6900 charities) generate nearly 98% of the sector's total revenue. The smaller charities (the 90%) generate just over 2% of the sector's total revenue, and hold an inconsequential 5.6% of the sector's total assets.

Act 134 as interpreted by these draft regulations depletes scarce charitable resources, imposes compliance burdens without flexibility, and prevents smaller charities from participating in advocacy. Resources that would otherwise be directed toward a charity's mission must now be spent to register, track and disclose lobbying, advocacy and all related costs. Without regulatory flexibility for size, scope and purpose, many smaller charities will be forced to choose whether they can afford to engage in State advocacy at all.

Unique Quality of Charities:

Charities are different than for-profit corporations. Charities are mission driven, rather than profit driven, and they advocate to advance a public purpose. Charities already disclose some lobbying activities on their IRS form 990 informational returns, are strictly prohibited from engaging in partisan electioneering, and are limited by Federal Law as to how much they can lobby.

Charities are strictly prohibited from engaging in partisan politics. Unlike trade organizations, charities can not have PACs, and can not endorse candidates. Charities may engage in voter and candidate educational activities only if the activities are conducted in a scrupulously non-partisan manner.

Under Federal law, charities may not exceed 20% of their gross revenue in Federal, State and local lobbying. They may choose between two standards. Under the insubstantial part test, charities may not exceed 5% of their total gross revenue in total lobbying expenses. If they choose the 501h election expenditure test, charities can spend up to 20% of its first \$500,000 in gross revenue, 15% of the next \$500,000, 10% for the next, 5% thereafter, and so on. The expenditure test caps grassroots advocacy at 25% of the total permitted lobbying budget. There are no comparable limits for private sector lobbying or for trade organizations.

Depletes Charitable Resources:

Act 134 is depleting essential charitable resources. Funds that would otherwise be directed toward charitable mission must now be spent registering, tracking and disclosing advocacy expenses. In fact, charities that are close to the \$2500 quarterly threshold must still bear the tracking burden to determine whether they exceed the threshold. The sector is already stressed. Charities are bending under the weight of increased administrative compliance, while the need for their services only increases. Donations and earned revenue should be used to advance the charitable mission, not on additional administrative compliance.

Regulatory Flexibility Needed:

Uniform regulatory and reporting requirements impose unnecessary and disproportionately burdensome demands charities, especially smaller charities. All regulated entities can not be treated the same. They are not the same. Small to mid-sized charities have limited resources, possess different capacity levels, and respond to administrative obligations differently than their larger counterparts. Smaller charities typically lack sophisticated accounting or bookkeeping skills, but they serve the needs of the community. While some flexibility has already been incorporated into the draft regulations, for charities at least, more flexibility is needed.

One example of such flexibility would permit less complex reporting for methods for Smaller Charities. Section 1305-A (b)(2.1) of the Act permits tracking and disclosing through "any reasonable method of estimation and allocation". "Reasonable" should be based on the size, scope, and capacity of the charity. Time sheets for example are impractical and inaccurate. Smaller charities do not track their time in 6 minute or 15 minute increments the way accountants or lobbying firms may. Regulations that do not account for charities' unique qualities or public purpose, or fail to recognize differences in scale and resources, will significantly and negatively impact charities ability to serve our communities.

Chilling Effect on Advocacy:

Operating a government relations program has become a formidable and expensive task. Advocacy is core to the mission of many charities, particularly those in human services. For smaller charities operating in this increasingly lean economic climate, advocacy is often the first place to cut-back. These are the same nonpartisan, mission driven organizations that possess valuable information for elected officials, staff and agencies. Whether through complexity or cost, the Act discouraged charities from engaging in the public arena. Significant new reporting costs are being imposed with little useful information is created. The result is a chilling effect on advocacy, most significantly for small and mid-sized charities. These smaller charities are on the front lines working to solve community problems. These charities will opt-out from participating in the creation of public policy. So if smaller charities are forced to decide whether they can afford to engage in State advocacy, legislators and regulators will soon be working with less useful information from fewer sources.

Exclude Educational Communications:

Educational communications should be excluded. The draft regulations has not interpreted the phrase "purpose or foreseeable effect" sufficiently narrow to exclude educational communications. Communications by charities for the sole purpose of educating or sharing information with Legislators, Regulators or their staff should not be considered lobbying. Its purpose is to share information; not to influence legislative or regulatory action. An educational exclusion existed under prior lobbying laws, and currently exists as an exemption in the Federal lobbying law. If sharing information is treated as lobbying, then legislators and regulators will soon be working in a vacuum, without benefit of the experience of the regulated Community.

Advocacy is core to a charity's ability to achieve its mission. The draft regulations are a culmination of months of dedicated work, but still hinder the very institutions that relieve government of burden. Charities serve our communities needs and neediest. On behalf of PANO and Pennsylvania's 61,000 charities, I respectfully request additional consideration be granted to address the specific issues pertaining to charities advocacy rights under the draft regulations to Act 134 of 2006.

In closing I want to thank the Committee for this opportunity to offer our comments on behalf of Pennsylvania charities. Thank you for your consideration. I would be happy to answer questions.

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